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EXAMINER

ADDIE, RAYMOND W

ART UNIT

PAPER NUMBER

3671

DATE MAILED: 11/05/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/933,325

Applicant(s)

VANCE ET AL.

Examiner

Raymond W. Addie

Art Unit

3671

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 20 August 2001.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)                      4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)                      5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.                      6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 19-24 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential steps, such omission amounting to a gap between the steps. See MPEP § 2172.01. The omitted steps are: Providing a 1<sup>st</sup> and 2<sup>nd</sup> pair of stanchions; Providing a hopper having an open top that is larger than a bottom opening; Providing a hopper having an upper section that is wider than a lower section; Providing at least one brace extending between a front and rear end; Providing a baffle that can be removably position within a hopper.

Note to Applicant, although no actual method steps are cited in claims 19-24; the method step "of Providing" the elements cited in the claims, is assumed to be intended, for examining purposes.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 4, 5, 8, 9, 10, 12, 13, 16-18, 20, 21, 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stilwell # 4,217,065 in view of Fuller 2,551,110.

Stillwell discloses a slip-form ditch forming apparatus comprising:

A hopper (18) having a front and rear ends, joined by a pair of side walls. Said hopper further having an inner surface, outer surface, an open top and bottom, wherein said top has a larger opening than said bottom opening.

A first frame member (14) attached to the front end of the hopper.

A pair of front wheels (27) attached to said 1<sup>st</sup> frame member (14).

A 2<sup>nd</sup> frame member (16) attached to the rear end of the hopper (18).

A 2<sup>nd</sup> pair of wheels (27) attached to said 2<sup>nd</sup> frame member (16).

An extension (144) extending downwardly from the open bottom, proximate the front end, said extension having a flat bottom surface.

A skid (49) attached to the rear end of said hopper (at 59). Said skid having a shape or size consistent with the desired cross sectional configuration of a curb, a gutter or combination curb-gutter.

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What Stilwell does not disclose is the specific shape to form a 3-sided ditch or gutter.

However, Fuller teaches a portable form for lining irrigation ditches comprising:

A hopper (8) having at least one baffle plate (23/24, 27/28). An extension (6) having a flat bottom surface (14) interconnecting a pair of outwardly slanting sides (4). A skid attached to a rear end (12) of said hopper (8) said skid having a pair of sloped sides (34) joined by a flat bottom surface (33).

Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to provide the curb-gutter forming apparatus of Stilwell, with a 3-sided, gutter forming assembly, as taught by Fuller, in order to form gutter and ditches of a specific shape, as reasonably suggested by Stilwell. See Stilwell col. 4, lines 5-29, Col. 5, lines 25-56.col. 7, lines 29-col. 8, line 14; Figs. 1, 2, 4, 10. See Fuller col. 2-3 line 58; figs. 1-5.

In regards to Claims 2, 10 Stilwell discloses providing a tongue (114), attached to said 1<sup>st</sup> frame member (14). Said tongue being adapted to be attached to a locomotion device (104/117), such as a hand powered winch. Fuller teaches it is desirable to provide a tongue (31) having a plurality of vertically oriented tow points (32), for attaching to a locomotion device, such as a tractor. See Stilwell col. 7, line 47-col. 8, line 10. Fuller col. 3, lines 17-28.

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In regards to Claims 4, 5, 12, 13 Stilwell discloses the open top of said hopper is larger than the open bottom and the hopper has an upper section that is wider than a corresponding lower section. See Fig. 2.

In regards to Claims 8, 16 Stilwell discloses essentially all that is claimed, except for the use of baffles. However, Fuller teaches it is desirable to provide a hopper with at least one baffle plate (23/24, 27/28) in order to control the volumetric throughput of the hopper. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to provide the curb-gutter forming apparatus of Stilwell, with at least one baffle plate, as taught by Fuller, in order to control the amount of material being delivered to the slip-form. See Fuller Col. 2, lines 15-25.

3. Claims 3, 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stilwell in view of Fuller as applied to claims 1, 9 above, and further in view of Gebhard # 2,598,903.

Stilwell in view of Fuller discloses essentially all that is claimed, to include the use of support wheels mounted to the lower end of the frame members. What Stilwell in view of Fuller does not disclose is the use of a plurality of stanchions. However, Gebhard teaches it is desirable to mount a canal lining machine (10) with a plurality of vertically adjustable stanchions (18) each supported on a corresponding wheel assembly (14, 15, 16, 17).

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Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to provide the gutter forming apparatus of Stilwell in view of Fuller, with a plurality of vertically adjustable stanchions, as taught by Gebhard, in order to control the thickness and pitch of the ditch lining formed by compacting the hopper contents against the sides of said ditch. See Gebhard col. 2, line 26-44.

4. Claims 6, 7, 14, 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stilwell in view of Fuller, as applied to claim 1 above, and further in view of Brown # 4,379,653.

Stilwell in view of Fuller discloses essentially all that is claimed, to include the use of a forward extension disposed in front and below a hopper, for forming a surface to receive a material dispensed by said hopper. What Stilwell in view of Fuller do not disclose is the use of a brace and a chain. However, Brown teaches it is desirable to provide a vertically adjustable slip-form, in the form of a front mounted edger plate (104), in order to smooth a surface in advance of receiving a material dispensed by said hopper. Said edger plate (104) being supported by a plurality of chains (108, 109), that are further supported by a cross brace (103) extending between a front end and a rear end of a distribution hopper, having an auger disposed therein and defined by said edger plates (66, 67, 68).

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Therefore, it would have been obvious to one of ordinary skill to provide the curb-gutter forming apparatus of Stilwell in view of Fuller, with a vertically adjustable extension, such as an edger plate, as taught by Brown, in order to smooth a surface and define the thickness of a material about to be applied to said surface.

See Brown Col. 5, lines 37-48, col. 7, lines 25-55.

In regards to Claim 17 Stilwell discloses a method of forming a ditch comprising the steps of:

Placing a pair of coextensive forms (41a, 41b) on the ground.

Providing a ditch forming apparatus having a hopper with front and rear ends, side members, inner and outer surfaces. Said apparatus further having 1<sup>st</sup> and 2<sup>nd</sup> frame members attached to front and rear ends of said hopper, 1<sup>st</sup> and 2<sup>nd</sup> sets of wheels also attached, respectively, to said 1<sup>st</sup> and 2<sup>nd</sup> frame members; an extension extending downwardly from the open bottom proximate the front end; a skid attached to the rear end. Said skid having a shape or size consistent with the desired cross sectional configuration of a curb, a gutter or combination curb-gutter.

Placing concrete into the hopper.

Pulling the ditch forming apparatus along the pair of forms.

What Stilwell does not disclose is providing an extension and screed sized and shaped to form a 3-sided ditch or gutter.



However, Fuller teaches a method of lining ditches and gutter with a concrete material comprising the steps of: Providing a ditch forming apparatus having a hopper, at least one hopper baffle, an extension (6) having a flat bottom surface interconnecting 2 outwardly diagonal surfaces for shaping and smoothing a 3-sided ditch, a skid having a flat bottom surface interconnecting 2 outwardly diagonal surfaces for compacting and finishing a concrete layer that has been applied to a 3-sided ditch. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to provide the method of forming a ditch of Stilwell, with the method of providing a 3-sided slip-form assembly, as taught by Fuller, in order to form a ditch lining in a desired shape and thickness, as reasonably suggested by Stilwell. See Stilwell col. 9, lines 30-46. Fuller col. 3, lines 17-53.

In regards to Claim 18 Stilwell and Fuller both disclose the method step of pulling the ditch forming machine via a tongue attached to the 1<sup>st</sup> frame member.

In regards to Claims 20-21 Stilwell discloses the method step of: Providing a hopper with a top opening that is larger than a bottom opening and Providing a hopper that has an upper section that is wider than a lower section.

In regards to Claim 24 Stilwell discloses essentially all that is claimed, except for the method step of providing a hopper baffle. However, Fuller teaches it is desirable to provide a ditch forming machine with a hopper having a baffle. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to provide the ditch forming machine of Stilwell with a hopper baffle, as taught by Fuller, in order to control the volumetric throughput of the hopper contents.

5. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stilwell in view of Fuller, as applied to claim 17 above, and further in view of Gebhard.

Stilwell in view of Fuller discloses essentially all that is claimed, to include the use of support wheels mounted to the lower end of the frame members. What Stilwell in view of Fuller does not disclose is the use of a plurality of stanchions. However, Gebhard teaches it is desirable to support a canal lining machine (10) with a plurality of vertically adjustable stanchions (18) each supported on a corresponding wheel assembly (14, 15, 16, 17). Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to provide the method of forming ditches of Stilwell in view of Fuller, with the method step of providing plurality of vertically adjustable stanchions, as taught by Gebhard, in order to control the thickness and pitch of the ditch lining formed by compacting the hopper contents against the sides of said ditch. See Gebhard col. 2, line 26-44.

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6. Claims 22, 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stilwell in view of Fuller, as applied to claim 17 above, and further in view of Brown. Stilwell in view of Fuller discloses essentially all that is claimed, to include the use of a forward extension disposed in front and below a hopper, for forming a surface to receive a material dispensed by said hopper. What Stilwell in view of Fuller do not disclose is the use of a brace and a chain. However, Brown teaches it is desirable to provide a vertically adjustable slip-form, in the form of a front mounted edger plate (104), in order to smooth a surface in advance of receiving a material dispensed by said hopper. Said edger plate (104) being supported by a plurality of chains (108, 109), that are further supported by a cross brace (103) extending between a front end and a rear end of a distribution hopper, having an auger disposed therein and defined by said edger plates (66, 67, 68). Therefore, it would have been obvious to one of ordinary skill to provide the curb-gutter forming apparatus of Stilwell in view of Fuller, with a vertically adjustable extension, such as an edger plate, as taught by Brown, in order to smooth a surface and define the thickness of a material about to be applied to said surface.

See Brown Col. 5, lines 37-48, col. 7, lines 25-55.

***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Williamson # 772,597 discloses a curb and gutter former. Baily # 2,094,910 discloses an apparatus for compacting and surfacing 3 sided surfaces. Shook # 2,589,634 discloses a concrete laying apparatus. Baltes # 2,999,433 discloses a road finishing machine supported on rails. Lafleur # 3,566,760 discloses an apparatus for forming paved channels. Gorgei et al. # 3,767,031 discloses a continuous conveyor system for supplying a continuous volume of concrete. Merrill # 4,027,990 discloses an adjustable curber. Corcoran et al. # 4,507,012 discloses an apparatus for filling trenches in paved surfaces. Dyck # 4,557,633 discloses a portable ditch lining machine. Ives # 4,828,432 discloses an apparatus for lining trenches. Watkins # 4,842,441 discloses an apparatus for filling trenches. Fukukawa et al. # 4,854,769 discloses a system for paving inclined and curved surfaces.

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8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Raymond Addie whose telephone number is (703) 305-0135. The examiner can normally be reached on Monday-Friday from 8:00 am to 2:00 pm, 6-8 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will, can be reached on (703) 308-3870. The fax phone number for this Group is (703) 305-8623.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1113.



**Thomas B. Will**  
**Supervisory Patent Examiner**  
**Group 3600**

**RWA**  
**11/01/2002**